

City of Fresno  
No. Fee-Govt. Code 6103  
and 27383

THIS COPY 54055540

When Recorded Mail to:  
Public Works  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721-3623

RECORDED IN OFFICIAL RECORDS OF FRESNO COUNTY, CALIFORNIA	
AT <u>13</u>	MIN PAST <u>10</u> A M
MAR 1 - 1994	
WILLIAM C. GREENWOOD County Recorder	FEE \$

----- ABOVE SPACE FOR RECORDER'S USE -----

APN: 477-15-OIT

Redevelopment Agency of  
the City of Fresno

## STATEMENT OF COVENANTS RESTRICTING SPECIFIED USES OF PROPERTY

### RECITALS

WHEREAS, the undersigned Redevelopment Agency of the City of Fresno, hereinafter referred to and called "Covenantor," hereby represents and warrants that it is the record owner of the following described real property ("Property") situated in the County of Fresno, State of California:

SEE EXHIBIT "A"

WHEREAS, the California State Department of Toxic Substances Control ("DTSC") has required that a deed restriction be recorded on the Property as a condition to the approved conceptual remediation plan.

NOW, THEREFORE, as required by the DTSC, the Redevelopment Agency of the City of Fresno and its successors and assigns hereby agree as follows:

### ARTICLE 1 GENERAL PROVISIONS

1.01 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to

By \_\_\_\_\_

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as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the specific portion of the Property shown in attached Exhibit "A" incorporated herein. Each and all of the Restrictions are imposed pursuant to Sections 25356.1 and 25355.5 of the California Health and Safety Code and run with the land. Each and all of the Restrictions are enforceable by the DTSC.

- 1.02      Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.
- 1.03      Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the specified portion of said Property.
- 1.04      Inspection and Maintenance. Covenantor shall semi-annually inspect and make necessary repairs to the cap covering that portion of the property identified in Exhibit "A". The purpose being the maintenance of the cap's integrity as a barrier preventing water infiltration into contaminated soils, the movement of contaminated soil in surface runoff, and wind-borne transport

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of contaminated soils.

- 1.05      Sampling. Twice a year at approximate six (6) month intervals beginning upon execution of this covenant, Covenantor shall collect and have analyzed five (5) groundwater samples. One sample shall be taken from each of the five existing groundwater monitoring wells. (Refer to Exhibit "C" for location of groundwater monitoring wells.) The samples shall be analyzed for lead. Copies of the test reports shall be sent to the DTSC.

## ARTICLE II DEFINITIONS

- 2.01      Department. "Department" shall mean the California State Department of Toxic Substances Control (DTSC) and shall include its successor agencies, if any.
- 2.02      Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.
- 2.03      Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.
- 2.04      Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Property.

ARTICLE III  
DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01      Restriction on Use. Covenantor promises to restrict the use of the portion of the Property as described in Exhibit "A" as follows:

- (1)      Covenantor shall not allow any new use of the property without first applying for and receiving a written variance from the DTSC for that new use pursuant to Article IV of this covenant and agreement.
- (2)      Covenantor shall not permit the construction of any improvements on top of the clay cap covering that portion of the property identified in Exhibit "A" and shall not allow any work to be performed which could jeopardize the integrity of the cap without first applying for and receiving a written variance from the DTSC pursuant to Article IV of this covenant and agreement.
- (3)      Any work required to comply with the provisions of the approved Remedial Action Plan and the future construction of park and recreation facilities shall be exempt from a written variance.

3.02      Conveyance of Property. The Owner or Owners shall provide a thirty (30) day advance notice to the DTSC of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. The DTSC shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.

3.03

Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the DTSC, by reason of the Covenant, to require that the Owner modify or remove any Improvements constructed in violation of the paragraph. Violation of the Covenant shall be grounds for the Department to file any actions against the Owner as provided by law.

3.04

Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the restricted Property. The instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

#### ARTICLE IV

#### VARIANCE AND TERMINATION

4.01

Modification or Removal. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the DTSC for a written variance from the provisions of this Covenant. Such application shall be made in accordance with California Health and Safety Code Section 25233.

4.02

Termination. Any Owner or, with the Owner's consent, an Occupant of the

Property or a portion thereof may apply to the DTSC for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with California Health and Safety Code Section 25234.

- 4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

## ARTICLE V MISCELLANEOUS

- 5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

- 5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by first class United States mail, postage paid certified, return receipt requested: TO: "Covenantor"

Redevelopment Agency of the City of Fresno  
Public Works Department  
2600 Fresno Street  
Fresno, CA 93721-3616  
Attention: Steve Neill

COPY TO: Department of Toxic Substances Control  
Fresno District Office  
1515 Tollhouse Road  
Clovis, CA 93612  
Attention: Adam Palmer

- 5.03      Partial Invalidity. If any portion of the Restrictions set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.
- 5.04      Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.
- 5.05      Recordation. This instrument shall be executed by the Covenantor and by the Director, California Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of Fresno within ten (10) days of the date of execution.
- 5.06      References. All references to Code sections include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

OWNER

Redevelopment Agency of the City of Fresno

By: Michael A. Beimer

Title: Ex-Officio Executive Director

Date: 10 February, 1994

CALIFORNIA DEPARTMENT OF TOXIC

SUBSTANCES CONTROL

By: Alfred W. Ford

Title: CHIEF SITE MITIGATION REG. 1

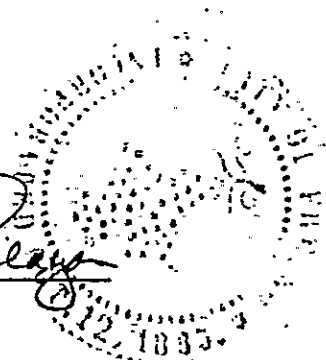
Date: DEC. 16 1993

APPROVED AS TO FORM:  
JAMES P. LOUGH  
Ex-Officio Attorney

By: James C. Lough  
Deputy  
12/16/93

ATTEST:  
JACQUELINE L. RYLE  
Ex-Officio Clerk

By: Jacqueline L. Ryle  
Deputy





STATE OF CALIFORNIA       )  
  )  
COUNTY OF Sacramento   )

on December 16, 1993 before me, the undersigned, a  
Notary Public in and for said state, personally appeared \_\_\_\_\_  
Allen Holtsander \_\_\_\_\_, personally known to me or  
proved to me on the basis of satisfactory evidence to be the  
person who executed the within instrument as Chief Site  
Mitigation Branch.,  
of the Department of Toxic Substances Control the agency that  
executed the within instrument, and acknowledged to me that which  
agency executed the same.

WITNESS my hand and official seal,



Anne M. Names  
Notary Public in and for said  
County and State

## ALL-PURPOSE ACKNOWLEDGMENT

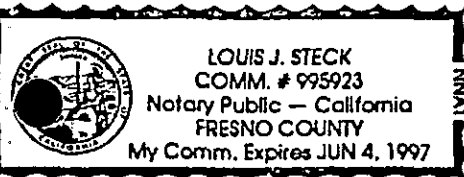
State of California

County of Fresno

On 10 Feb '94 before me, Louis J. Steck, Notary Public  
DATE

personally appeared MICHAEL A. Bierman  
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.  
WITNESS MY HAND AND OFFICIAL SEAL.



Louis J. Steck  
SIGNATURE OF NOTARY

### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL(S)  
☒ CORPORATE Ex-Officio  
OFFICERS Executive Director  
TITLES  
☐ PARTNERS  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ SUBSCRIBING WITNESS  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

### SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)  
Redevelopment Agency of  
The City of Fresno.

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it would prevent hazardous attachment of this certificate to unmarked documents.

THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:

Title or Type of Document Statement of Covenants  
Number of Pages 8 Date of Document 10 February 1994  
Signer(s) Other Than Named Above Allen K. Woodard.

DESCRIPTION  
CHURCH/FRUIT JUNKYARD

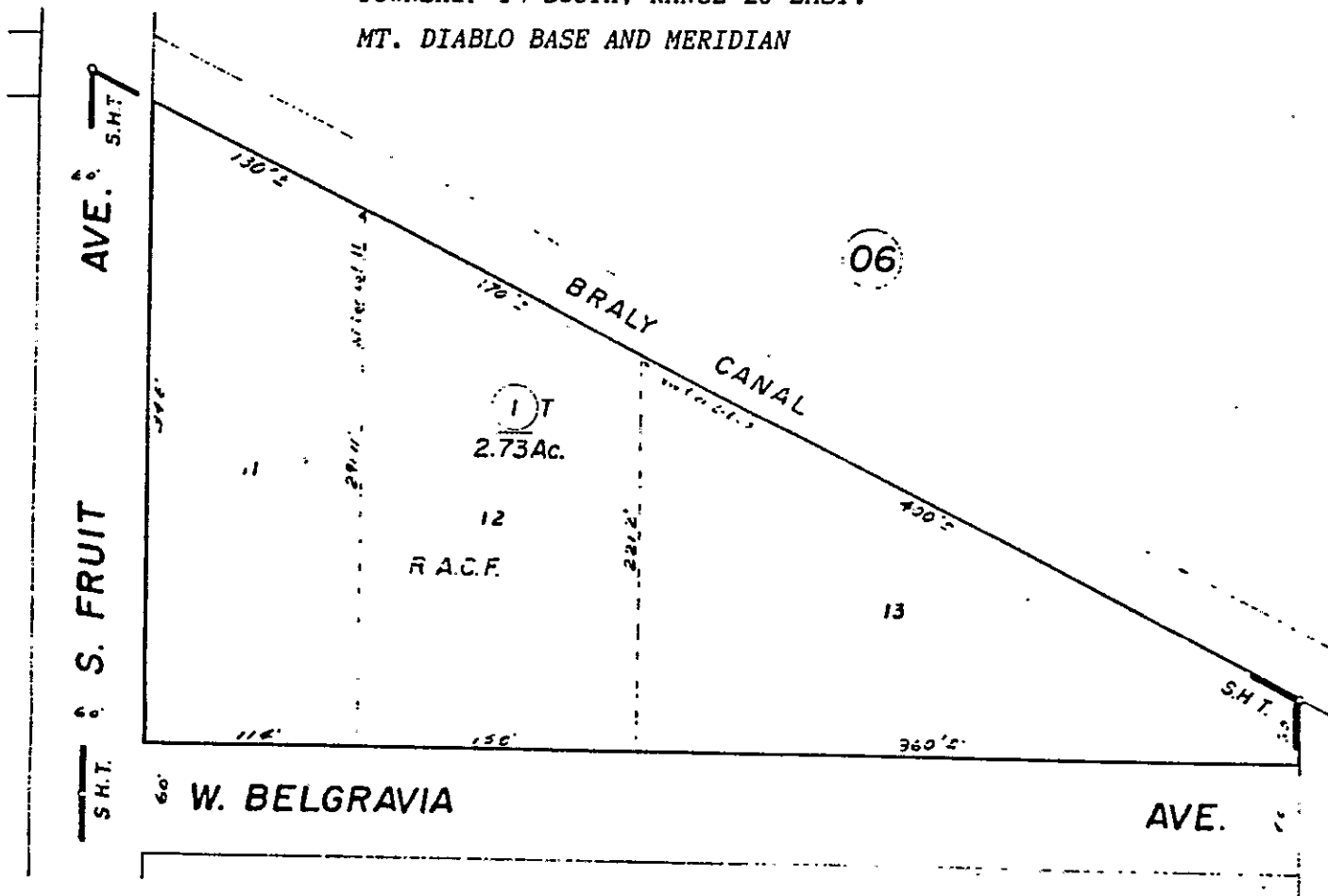
All that certain piece or parcel of land situate, lying and being in the County of Fresno, State of California, to wit:

Those portions of Section 17, Township Fourteen (14) South, Range Twenty (20) East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, described as an entirety as follows:

Assessor's Map Book Four Hundred and Seventy-Seven (477), Page Fifteen (15), Parcel number one (1) comprising 2.73 acres as shown in Exhibit "B".

Exhibit "A"

SUBDIVIDED LAND IN PORTION OF SECTION 17,  
TOWNSHIP 14 SOUTH, RANGE 20 EAST.  
MT. DIABLO BASE AND MERIDIAN



SUBURBAN HOME TRACT  
R.S. BK. 7, PG. 30

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EXHIBIT "B"

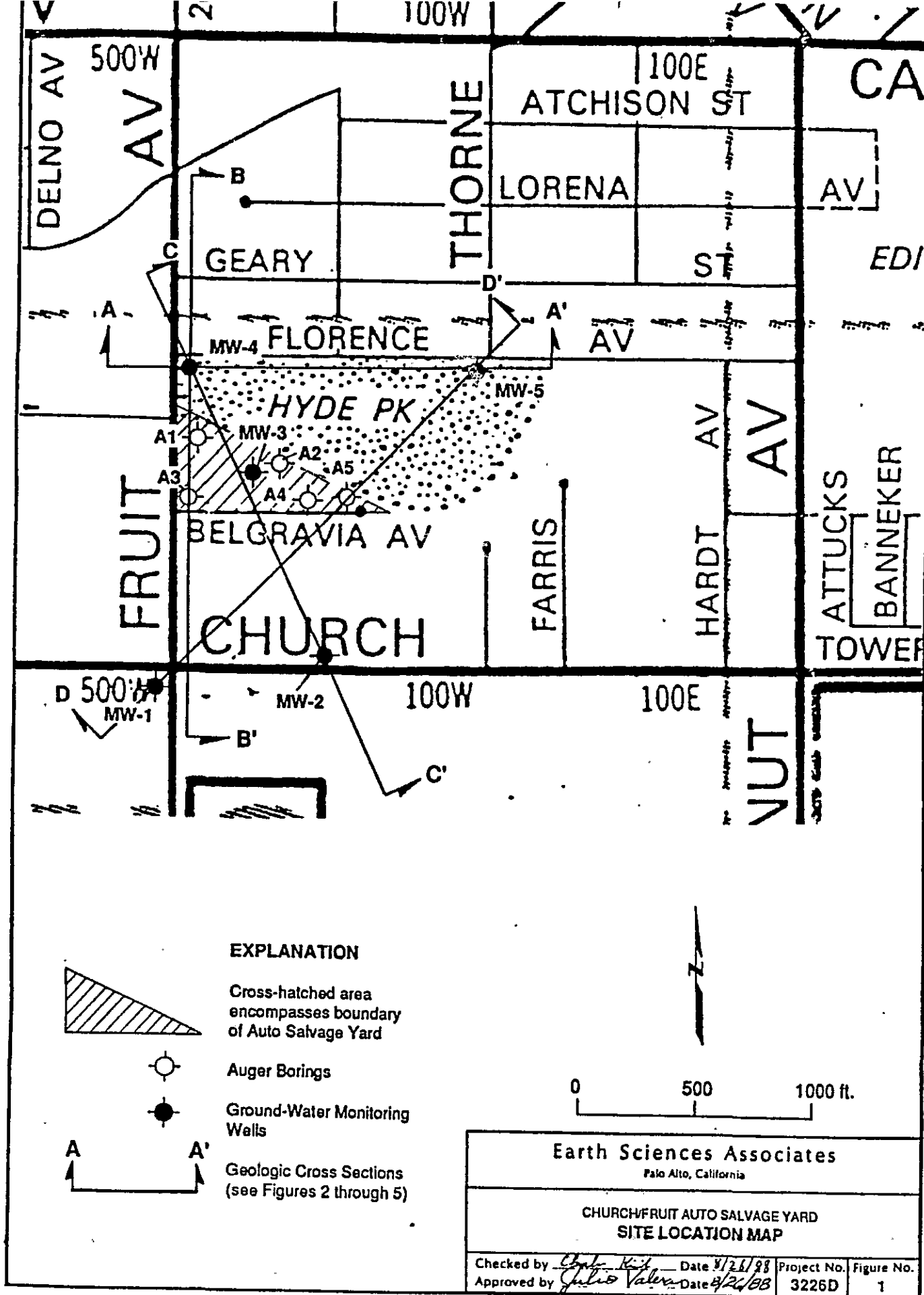


EXHIBIT "C"